

P.L. 1997, CHAPTER 6, *approved January 24, 1997*  
Assembly, No. 2187 (*First Reprint*)

1 AN ACT concerning telecommunications crime and revising various  
2 parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. N.J.S.2C:20-1 is amended to read as follows:

8 2C:20-1. Definitions. In chapters 20 and 21, unless a different  
9 meaning plainly is required:

10 a. "Deprive" means: (1) to withhold or cause to be withheld  
11 property of another permanently or for so extended a period as to  
12 appropriate a substantial portion of its economic value, or with  
13 purpose to restore only upon payment of reward or other  
14 compensation; or (2) to dispose or cause disposal of the property so  
15 as to make it unlikely that the owner will recover it.

16 b. "Fiduciary" means an executor, general administrator of an  
17 intestate, administrator with the will annexed, substituted  
18 administrator, guardian, substituted guardian, trustee under any trust,  
19 express, implied, resulting or constructive, substituted trustee,  
20 executor, conservator, curator, receiver, trustee in bankruptcy,  
21 assignee for the benefit of creditors, partner, agent or officer of a  
22 corporation, public or private, temporary administrator, administrator,  
23 administrator pendente lite, administrator ad prosequendum,  
24 administrator ad litem or other person acting in a similar capacity.

25 c. "Financial institution" means a bank, insurance company, credit  
26 union, savings and loan association, investment trust or other  
27 organization held out to the public as a place of deposit of funds or

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ATC committee amendments adopted November 7, 1996.

- 1 medium of savings or collective investment.
- 2 d. "Government" means the United States, any state, county,  
3 municipality, or other political unit, or any department, agency or  
4 subdivision of any of the foregoing, or any corporation or other  
5 association carrying out the functions of government.
- 6 e. "Movable property" means property the location of which can  
7 be changed, including things growing on, affixed to, or found in land,  
8 [and] <sup>1</sup>and<sup>1</sup> documents <sup>1</sup>[or data]<sup>1</sup>, although the rights represented  
9 thereby have no physical location. "Immovable property" is all other  
10 property.
- 11 f. "Obtain" means: (1) in relation to property, to bring about a  
12 transfer or purported transfer of a legal interest in the property,  
13 whether to the obtainer or another; or (2) in relation to labor or  
14 service, to secure performance thereof.
- 15 g. "Property" means anything of value, including real estate,  
16 tangible and intangible personal property, trade secrets, contract  
17 rights, choses in action and other interests in or claims to wealth,  
18 admission or transportation tickets, captured or domestic animals,  
19 food and drink, electric, gas, steam or other power, financial  
20 instruments, information, data, and computer software, in either  
21 human readable or computer readable form, copies or originals.
- 22 h. "Property of another" includes property in which any person  
23 other than the actor has an interest which the actor is not privileged to  
24 infringe, regardless of the fact that the actor also has an interest in the  
25 property and regardless of the fact that the other person might be  
26 precluded from civil recovery because the property was used in an  
27 unlawful transaction or was subject to forfeiture as contraband.  
28 Property in possession of the actor shall not be deemed property of  
29 another who has only a security interest therein, even if legal title is in  
30 the creditor pursuant to a conditional sales contract or other security  
31 agreement.
- 32 i. "Trade secret" means the whole or any portion or phase of any  
33 scientific or technical information, design, process, procedure, formula  
34 or improvement which is secret and of value. A trade secret shall be  
35 presumed to be secret when the owner thereof takes measures to  
36 prevent it from becoming available to persons other than those  
37 selected by the owner to have access thereto for limited purposes.
- 38 j. "Dealer in property" means a person who buys and sells property  
39 as a business.
- 40 k. "Traffic" means:
- 41 (1) To sell, transfer, distribute, dispense or otherwise dispose of  
42 property to another person; or
- 43 (2) To buy, receive, possess, or obtain control of or use property,  
44 with intent to sell, transfer, distribute, dispense or otherwise dispose  
45 of such property to another person.
- 46 l. "Broken succession of title" means lack of regular documents of

1 purchase and transfer by any seller except the manufacturer of the  
2 subject property, or possession of documents of purchase and transfer  
3 by any buyer without corresponding documents of sale and transfer in  
4 possession of seller, or possession of documents of sale and transfer  
5 by seller without corresponding documents of purchase and transfer  
6 in possession of any buyer.

7 m. "Person" includes any individual or entity or enterprise, as  
8 defined herein, holding or capable of holding a legal or beneficial  
9 interest in property.

10 n. "Anything of value" means any direct or indirect gain or  
11 advantage to any person.

12 o. "Interest in property which has been stolen" means title or right  
13 of possession to such property.

14 p. "Stolen property" means property that has been the subject of  
15 any unlawful taking.

16 q. "Enterprise" includes any individual, sole proprietorship,  
17 partnership, corporation, business trust, association, or other legal  
18 entity, and any union or group of individuals associated in fact,  
19 although not a legal entity, and it includes illicit as well as licit  
20 enterprises and governmental as well as other entities.

21 r. "Attorney General" includes the Attorney General of New  
22 Jersey, his assistants and deputies. The term shall also include a  
23 county prosecutor or his designated assistant prosecutor, if a county  
24 prosecutor is expressly authorized in writing by the Attorney General  
25 to carry out the powers conferred on the Attorney General by this  
26 chapter.

27 s. "Access device" means property consisting of any telephone  
28 calling card number, credit card number, account number, mobile  
29 identification number, electronic serial number, personal identification  
30 number, or any other data intended to control or limit access to  
31 telecommunications or other computer networks in either human  
32 readable or computer readable form, either copy or original, that can  
33 be used to obtain telephone service.

34 t. "Defaced access device" means any access device, in either  
35 human readable or computer readable form, either copy or original,  
36 which has been removed, erased, defaced, altered, destroyed, covered  
37 or otherwise changed in any manner from its original configuration.

38 (cf: P.L.1984, c.184, s.1)

39

40 2. N.J.S.2C:20-2 is amended to read as follows:

41 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions  
42 Applicable to Theft Generally. a. Consolidation of Theft Offenses.  
43 Conduct denominated theft in this chapter constitutes a single offense,  
44 but each episode or transaction may be the subject of a separate  
45 prosecution and conviction. A charge of theft may be supported by  
46 evidence that it was committed in any manner that would be theft

1 under this chapter, notwithstanding the specification of a different  
2 manner in the indictment or accusation, subject only to the power of  
3 the court to ensure fair trial by granting a bill of particulars, discovery,  
4 a continuance, or other appropriate relief where the conduct of the  
5 defense would be prejudiced by lack of fair notice or by surprise.

6 b. Grading of theft offenses.

7 (1) Theft constitutes a crime of the second degree if:

8 (a) The amount involved is \$75,000.00 or more;

9 (b) The property is taken by extortion;

10 (c) The property stolen is a controlled dangerous substance or  
11 controlled substance analog as defined in N.J.S.2C:35-2 and the  
12 quantity is in excess of one kilogram; or

13 (d) The property stolen is a person's benefits under federal or State  
14 law, or from any other source, which the Department of Human  
15 Services or an agency acting on its behalf has budgeted for the  
16 person's health care and the amount involved is \$75,000 or more.

17 (2) Theft constitutes a crime of the third degree if:

18 (a) The amount involved exceeds \$500.00 but is less than  
19 \$75,000.00;

20 (b) The property stolen is a firearm, motor vehicle, vessel, boat,  
21 horse or airplane;

22 (c) The property stolen is a controlled dangerous substance or  
23 controlled substance analog as defined in N.J.S.2C:35-2 and the  
24 amount involved is less than \$75,000.00 or is undetermined and the  
25 quantity is one kilogram or less;

26 (d) It is from the person of the victim;

27 (e) It is in breach of an obligation by a person in his capacity as a  
28 fiduciary;

29 (f) It is by threat not amounting to extortion;

30 (g) It is of a public record, writing or instrument kept, filed or  
31 deposited according to law with or in the keeping of any public office  
32 or public servant;

33 (h) The property stolen is a person's benefits under federal or State  
34 law, or from any other source, which the Department of Human  
35 Services or an agency acting on its behalf has budgeted for the  
36 person's health care and the amount involved is less than \$75,000; [or  
37 ]

38 (i) The property stolen is any real or personal property related to,  
39 necessary for, or derived from research, regardless of value, including,  
40 but not limited to, any sample, specimens and components thereof,  
41 research subject, including any warm-blooded or cold-blooded animals  
42 being used for research or intended for use in research, supplies,  
43 records, data or test results, prototypes or equipment, as well as any  
44 proprietary information or other type of information related to  
45 research ;or

46 (j) The property stolen consists of an access device or a defaced

1 access device.

2 (3) Theft constitutes a crime of the fourth degree if the amount  
3 involved is at least \$200.00 but does not exceed \$500.00. If the  
4 amount involved was less than \$200.00 the offense constitutes a  
5 disorderly persons offense.

6 (4) The amount involved in a theft shall be determined by the trier  
7 of fact. The amount shall include, but shall not be limited to, the  
8 amount of any State tax avoided, evaded or otherwise unpaid,  
9 improperly retained or disposed of. Amounts involved in thefts  
10 committed pursuant to one scheme or course of conduct, whether  
11 from the same person or several persons, may be aggregated in  
12 determining the grade of the offense.

13 c. Claim of right. It is an affirmative defense to prosecution for  
14 theft that the actor:

15 (1) Was unaware that the property or service was that of another;

16 (2) Acted under an honest claim of right to the property or service  
17 involved or that he had a right to acquire or dispose of it as he did; or

18 (3) Took property exposed for sale, intending to purchase and pay  
19 for it promptly, or reasonably believing that the owner, if present,  
20 would have consented.

21 d. Theft from spouse. It is no defense that theft was from the  
22 actor's spouse, except that misappropriation of household and personal  
23 effects, or other property normally accessible to both spouses, is theft  
24 only if it occurs after the parties have ceased living together.

25 (cf: P.L.1995, c.20, s.5)

26

27 <sup>1</sup>[3. N.J.S.2C:20-3 is amended to read as follows:

28 2C:20-3. Theft by Unlawful Taking or Disposition.

29 a. Movable property. A person is guilty of theft if he unlawfully  
30 takes, or exercises unlawful control over, movable property of  
31 another, including but not limited to an access device or a defaced  
32 access device, with purpose to deprive him thereof.

33 b. Immovable property. A person is guilty of theft if he unlawfully  
34 transfers any interest in immovable property of another with purpose  
35 to benefit himself or another not entitled thereto.

36 (cf: P.L.1978, c.95, s.2C:20-3)]<sup>1</sup>

37

38 <sup>1</sup>[4. N.J.S.2C:20-4 is amended to read as follows:

39 2C:20-4. Theft by Deception.

40 A person is guilty of theft if he purposely obtains property of  
41 another by deception. A person deceives if he purposely:

42 a. Creates or reinforces a false impression, including false  
43 impressions as to identity, law, value, intention or other state of  
44 mind; but deception as to a person's intention to perform a promise  
45 shall not be inferred from the fact alone that he did not subsequently  
46 perform the promise;

1 b. Prevents another from acquiring information which would affect  
2 his judgment of a transaction; or

3 c. Fails to correct a false impression which the deceiver previously  
4 created or reinforced, or which the deceiver knows to be influencing  
5 another to whom he stands in a fiduciary or confidential relationship.

6 The term "deceive" does not, however, include falsity as to  
7 matters having no pecuniary significance, or puffing or exaggeration  
8 by statements unlikely to deceive ordinary persons in the group  
9 addressed.

10 (cf: P.L.1978, c.95, s.2C:20-4)]<sup>1</sup>

11  
12 <sup>1</sup>[5.]3.<sup>1</sup> N.J.S.2C:20-7 is amended to read as follows:

13 2C:20-7. Receiving Stolen Property.

14 a. Receiving. A person is guilty of theft if he knowingly receives  
15 or brings into this State movable property of another <sup>1</sup>[including but  
16 not limited to an access device or defaced access device.]<sup>1</sup> knowing  
17 that it has been stolen, or believing that it is probably stolen. It is an  
18 affirmative defense that the property was received with purpose to  
19 restore it to the owner. "Receiving" means acquiring possession,  
20 control or title, or lending on the security of the property.

21 b. Presumption of knowledge. The requisite knowledge or belief  
22 is presumed in the case of a person who:

23 (1) Is found in possession or control of two or more items of  
24 property stolen on two or more separate occasions; or

25 (2) Has received stolen property in another transaction within the  
26 year preceding the transaction charged; or

27 (3) Being a person in the business of buying or selling property of  
28 the sort received, acquires the property without having ascertained by  
29 reasonable inquiry that the person from whom he obtained it had a  
30 legal right to possess and dispose of it; or

31 (4) Is found in possession of two or more <sup>1</sup>[access devices or]<sup>1</sup>  
32 defaced access devices.

33 (cf: P.L.1981, c.290, s.19)

34  
35 <sup>1</sup>[6.]4.<sup>1</sup> N.J.S.2C:20-8 is amended to read as follows:

36 2C:20-8. Theft of Services.

37 a. A person is guilty of theft if he purposely obtains services which  
38 he knows are available only for compensation, by deception or threat,  
39 or by false token, slug, or other means, including but not limited to  
40 mechanical or electronic devices or through fraudulent statements, to  
41 avoid payment for the service. "Services" include labor or professional  
42 service; transportation, telephone, telecommunications, electric, water,  
43 gas, cable television, or other public service; accommodation in hotels,  
44 restaurants or elsewhere; entertainment; admission to exhibitions; use  
45 of vehicles or other movable property. Where compensation for  
46 service is ordinarily paid immediately upon the rendering of such

1 service, as in the case of hotels and restaurants, absconding without  
2 payment or offer to pay gives rise to a presumption that the service  
3 was obtained by deception as to intention to pay.

4 b. A person commits theft if, having control over the disposition of  
5 services of another, to which he is not entitled, he knowingly diverts  
6 such services to his own benefit or to the benefit of another not  
7 entitled thereto.

8 c. Any person who, without permission and for the purpose of  
9 obtaining electric current, gas or water with intent to defraud any  
10 vendor of electricity, gas or water or a person who is furnished by a  
11 vendor with electric current, gas or water:

12 (1) Connects or causes to be connected by wire or any other device  
13 with the wires, cables or conductors of any such vendor or any other  
14 person; or

15 (2) Connects or disconnects the meters, pipes or conduits of such  
16 vendor or any other person or in any other manner tampers or  
17 interferes with such meters, pipes or conduits, or connects with such  
18 meters, pipes or conduits by pipes, conduits or other instruments--is  
19 guilty of a disorderly persons offense.

20 The existence of any of the conditions with reference to meters,  
21 pipes, conduits or attachments, described in this subsection, is  
22 presumptive evidence that the person to whom gas, electricity or water  
23 is at the time being furnished by or through such meters, pipes,  
24 conduits or attachments has, with intent to defraud, created or caused  
25 to be created with reference to such meters, pipes, conduits or  
26 attachments, the condition so existing; provided, however, that the  
27 presumption shall not apply to any person so furnished with gas,  
28 electricity or water for less than 31 days or until there has been at least  
29 one meter reading.

30 A violation of this subsection shall be deemed to be a continuing  
31 offense as long as the conditions described in this subsection exist.

32 d. Any person who, without permission or authority, connects or  
33 causes to be connected by wires or other devices, any meter erected  
34 or set up for the purpose of registering or recording the amount of  
35 electric current supplied to any customer by any vendor of electricity  
36 within this State, or changes or shunts the wiring leading to or from  
37 any such meter, or by any device, appliance or means whatsoever  
38 tampers with any such meter so that the meter will not measure or  
39 record the full amount of electric current supplied to such customer,  
40 is guilty of a disorderly persons offense.

41 The existence of any of the conditions with reference to meters or  
42 attachments described in this subsection is presumptive evidence that  
43 the person to whom electricity is at the time being furnished by or  
44 through such meters or attachments has, with intent to defraud,  
45 created or caused to be created with reference to such meters or  
46 attachments, the condition so existing; provided, however, that the

1 presumption shall not apply to any person so furnished with electricity  
2 for less than 31 days or until there has been at least one meter reading.

3 A violation of this subsection shall be deemed to be a continuing  
4 offense as long as the conditions described in this subsection exist.

5 e. Any person who, with intent to obtain cable television service  
6 without payment, in whole or in part, of the lawful charges therefor,  
7 or with intent to deprive another of the lawful receipt of such service,  
8 damages, cuts, tampers with, installs, taps or makes any connection  
9 with, or who displaces, removes, injures or destroys any wire, cable,  
10 conduit, apparatus or equipment of a cable television company  
11 operating a CATV system; or who, without authority of a cable  
12 television company, intentionally prevents, obstructs or delays, by any  
13 means or contrivance, the sending, transmission, conveyance,  
14 distribution or receipt of programming material carried by equipment  
15 of the cable television company operating a CATV system, is a  
16 disorderly person.

17 The existence of any of the conditions with reference to wires,  
18 cables, conduits, apparatus or equipment described in this subsection  
19 is presumptive evidence that the person to whom cable television  
20 service is at the time being furnished has, with intent to obtain cable  
21 television service without authorization or compensation or to  
22 otherwise defraud, created or caused to be created the condition so  
23 existing.

24 f. Any person who purposely or knowingly manufactures,  
25 constructs, sells, offers for sale, distributes or installs any equipment,  
26 device or instrument designed or intended to facilitate the interception,  
27 decoding or receipt of any cable television service with intent to obtain  
28 such service and avoid the lawful payment of the charges therefor to  
29 the provider, in whole or in part, is a disorderly person.

30 Any communications paraphernalia prohibited under this subsection  
31 shall be subject to forfeiture and may be seized by the State or any law  
32 enforcement officer in accordance with the provisions of  
33 N.J.S.2C:64-1 et seq.

34 g. Any person who purposely or knowingly maintains or possesses  
35 any equipment, device or instrument of the type described in  
36 subsection f. of this section or maintains or possesses any equipment,  
37 device or instrument actually used to facilitate the interception,  
38 decoding or receipt of any cable television service with intent to obtain  
39 such service and avoid the lawful payment, in whole or in part, of the  
40 charges therefor to the provider, is a disorderly person.

41 Any communications paraphernalia prohibited under this subsection  
42 shall be subject to forfeiture and may be seized by the State or any law  
43 enforcement officer in accordance with the provisions of  
44 N.J.S.2C:64-1 et seq.

45 h. Any person who, with the intent of depriving a telephone  
46 company of its lawful charges therefor, purposely or knowingly makes



1 use of any telecommunications service by means of the unauthorized  
2 use of any electronic or mechanical device or connection, or by the  
3 unauthorized use of billing information, or by the use of a computer,  
4 computer equipment or computer software, or by the use of  
5 misidentifying or misleading information given to a representative of  
6 the telephone company is guilty of a [disorderly persons offense] crime  
7 of the third degree.

8 The existence of any of the conditions with reference to electronic  
9 or mechanical devices, computers, computer equipment or computer  
10 software described in this subsection is presumptive evidence that the  
11 person to whom telecommunications service is at the time being  
12 furnished has, with intent to obtain telecommunications service  
13 without authorization or compensation or to otherwise defraud,  
14 created or caused to be created the condition so existing.

15 i. Any person who purposely or knowingly manufactures,  
16 constructs, sells, offers for sale, distributes, installs, or otherwise  
17 provides any service, equipment, device, computer, computer  
18 equipment, computer software or instrument designed or intended to  
19 facilitate the receipt of any telecommunications service and avoid the  
20 lawful payment of the charges therefor to the provider, in whole or in  
21 part, is guilty of a [disorderly persons offense] crime of the third  
22 degree.

23 Any communications paraphernalia, computer, computer equipment  
24 or computer software prohibited under this subsection shall be subject  
25 to forfeiture and may be seized by the State or any law enforcement  
26 officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

27 j. Any person who purposely or knowingly maintains or possesses  
28 any equipment, device, computer, computer equipment, computer  
29 software or instrument of the type described in subsection i. of this  
30 section, or maintains or possesses any equipment, device, computer,  
31 computer equipment, computer software or instrument actually used  
32 to facilitate the receipt of any telecommunications service with intent  
33 to obtain such service and avoid the lawful payment, in whole or in  
34 part, of the charges therefor to the provider, is guilty of a [disorderly  
35 persons offense] crime of the third degree.

36 Any communications paraphernalia, computer, computer equipment  
37 or computer software prohibited under this subsection shall be subject  
38 to forfeiture and may be seized by the State or any law enforcement  
39 officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

40 k. In addition to any other disposition authorized by law, and  
41 notwithstanding the provisions of N.J.S.2C:43-3, every person who  
42 violates this section shall be sentenced to make restitution to the  
43 vendor and to pay a minimum fine of \$500.00 for each offense. In  
44 determining the amount of restitution, the court shall consider the  
45 costs expended by the vendor, including but not limited to the repair  
46 and replacement of damaged equipment, the cost of the services

1 unlawfully obtained, investigation expenses, and attorney fees.

2 1. The presumptions of evidence applicable to offenses defined in  
3 subsections c., d., e. and h. of this section shall also apply in any  
4 prosecution for theft of services brought pursuant to the provisions of  
5 subsection a. or b. of this section.

6 (cf: P.L.1989, c.112, s.1)

7

8 <sup>1</sup>[7.] 5.<sup>1</sup> N.J.S.2C:21-1 is amended to read as follows:

9 2C:21-1. Forgery and Related Offenses.

10 a. Forgery. A person is guilty of forgery if, with purpose to  
11 defraud or injure anyone, or with knowledge that he is facilitating a  
12 fraud or injury to be perpetrated by anyone, the actor:

13 (1) Alters or changes any writing of another without his  
14 authorization;

15 (2) Makes, completes, executes, authenticates, issues or transfers  
16 any writing so that it purports to be the act of another who did not  
17 authorize that act or of a fictitious person, or to have been executed  
18 at a time or place or in a numbered sequence other than was in fact  
19 the case, or to be a copy of an original when no such original existed;  
20 or

21 (3) Utters any writing which he knows to be forged in a manner  
22 specified in paragraph (1) or (2).

23 "Writing" includes printing or any other method of recording  
24 information, money, coins, tokens, stamps, seals, credit cards, badges,  
25 trademarks, access devices, and other symbols of value, right,  
26 privilege, or identification.

27 b. Grading of forgery. Forgery is a crime of the third degree if the  
28 writing is or purports to be part of an issue of money, securities,  
29 postage or revenue stamps, or other instruments, certificates or  
30 licenses issued by the government, or part of an issue of stock, bonds  
31 or other instruments representing interest in or claims against any  
32 property or enterprise, or an access device.

33 Otherwise forgery is a crime of the fourth degree.

34 c. Possession of forgery devices. A person is guilty of possession  
35 of forgery devices, a crime of the third degree, when with purpose to  
36 use, or to aid or permit another to use the same for purposes of  
37 forging written instruments, including access devices, he makes or  
38 possesses any device, apparatus, equipment, computer, computer  
39 equipment, computer software or article specially designed or adapted  
40 to such use.

41 (cf: P.L.1981, c.290, s.20)

42

43 <sup>1</sup>[8. N.J.S.2C:41-1 is amended to read as follows:

44 2C:41-1. Definitions.

45 For purposes of this section and N.J.S.2C:41-2 through  
46 N.J.S.2C:41-6:

- 1 a. "Racketeering activity" means (1) any of the following crimes  
2 which are crimes under the laws of New Jersey or are equivalent  
3 crimes under the laws of any other jurisdiction:
- 4 (a) murder
  - 5 (b) kidnapping
  - 6 (c) gambling
  - 7 (d) promoting prostitution
  - 8 (e) obscenity
  - 9 (f) robbery
  - 10 (g) bribery
  - 11 (h) extortion
  - 12 (i) criminal usury
  - 13 (j) violations of Title 33 of the Revised Statutes
  - 14 (k) violations of Title 54A of the New Jersey Statutes and Title 54  
15 of the Revised Statutes
  - 16 (l) arson
  - 17 (m) burglary
  - 18 (n) theft and related crimes
  - 19 (o) forgery and fraudulent practices
  - 20 (p) fraud in the offering, sale or purchase of securities
  - 21 (q) alteration of motor vehicle identification numbers
  - 22 (r) unlawful manufacture, purchase, use or transfer of firearms
  - 23 (s) unlawful possession or use of destructive devices or explosives
  - 24 (t) violation of sections 112 through 116 inclusive of the "Casino  
25 Control Act," P.L.1977, c.110 (C.5:12-112 through 5:12-116)
  - 26 (u) violation of N.J.S.2C:35-5 except possession of 84 grams or  
27 less of marijuana or of N.J.S.2C:35-4 or N.J.S.2C:35-6
  - 28 (v) violation of subsection b. of N.J.S.2C:24-4 except for  
29 subparagraph (b) of paragraph (5) of subsection b.
  - 30 (w) violations of subsection h., i. or j. of N.J.S.2C:20-8 or  
31 violations of section 10 of P.L. .c. (C. )(now pending before the  
32 Legislature as section 10 of this bill),
- 33 (2) any conduct defined as "racketeering activity" under Title 18,  
34 U.S.C.{1961(1)(A), (B) and (D).
- 35 b. "Person" includes any individual or entity or enterprise as  
36 defined herein holding or capable of holding a legal or beneficial  
37 interest in property.
- 38 c. "Enterprise" includes any individual, sole proprietorship,  
39 partnership, corporation, business or charitable trust, association, or  
40 other legal entity, any union or group of individuals associated in fact  
41 although not a legal entity, and it includes illicit as well as licit  
42 enterprises and governmental as well as other entities.
- 43 d. "Pattern of racketeering activity" requires  
44 (1) Engaging in at least two incidents of racketeering conduct one  
45 of which shall have occurred after the effective date of this act and the  
46 last of which shall have occurred within 10 years (excluding any period

1 of imprisonment) after a prior incident of racketeering activity; and

2 (2) A showing that the incidents of racketeering activity embrace  
3 criminal conduct that has either the same or similar purposes, results,  
4 participants or victims or methods of commission or are otherwise  
5 interrelated by distinguishing characteristics and are not isolated  
6 incidents.

7 e. "Unlawful debt" means a debt

8 (1) Which was incurred or contracted in gambling activity which  
9 was in violation of the law of the United States, a state or political  
10 subdivision thereof; or

11 (2) Which is unenforceable under state or federal law in whole or  
12 in part as to principal or interest because of the laws relating to usury.

13 f. "Documentary material" includes any book, paper, document,  
14 writing, drawing, graph, chart, photograph, phonorecord, magnetic or  
15 recording or video tape, computer printout, other data compilation  
16 from which information can be obtained or from which information can  
17 be translated into useable form or other tangible item.

18 g. "Attorney General" includes the Attorney General of New  
19 Jersey, his assistants and deputies. The term shall also include a  
20 county prosecutor or his designated assistant prosecutor if a county  
21 prosecutor is expressly authorized in writing by the Attorney General  
22 to carry out the powers conferred on the Attorney General by this  
23 chapter.

24 h. "Trade or commerce" shall include all economic activity  
25 involving or relating to any commodity or service.

26 (cf: P.L.1995, c.110, s.1)]<sup>1</sup>

27

28 <sup>1</sup>[9. Section 8 of P.L.1968, c.409 (C.2A:156A-8) is amended to  
29 read as follows:

30 8. The Attorney General, county prosecutor or a person designated  
31 to act for such an official and to perform his duties in and during his  
32 actual absence or disability, may authorize, in writing, an ex parte  
33 application to a judge designated to receive the same for an order  
34 authorizing the interception of a wire, or electronic or oral  
35 communication by the investigative or law enforcement officers or  
36 agency having responsibility for an investigation when such  
37 interception may provide evidence of the commission of the offense of  
38 murder, kidnapping, gambling, robbery, bribery, a violation of  
39 paragraph (1) or (2) of subsection b. of N.J.S.2C:12-1, a violation of  
40 N.J.S.2C:21-19 punishable by imprisonment for more than one year,  
41 terroristic threats, violations of N.J.S.2C:35-3, N.J.S.2C:35-4 and  
42 N.J.S.2C:35-5, violations of sections 112 through 116, inclusive, of  
43 the "Casino Control Act," P.L.1977, c.110 (C.5:12-112 through  
44 5:12-116), arson, burglary, theft and related offenses punishable by  
45 imprisonment for more than one year, endangering the welfare of a  
46 child pursuant to N.J.S.2C:24-4, escape, forgery, alteration of motor

1 vehicle identification numbers, unlawful manufacture, purchase, use,  
2 or transfer of firearms, unlawful possession or use of destructive  
3 devices or explosives, racketeering or a violation of subsection g. of  
4 N.J.S.2C:5-2, leader of organized crime, violations of subsection h.,  
5 i. or j. of N.J.S.2C:20-8, violations of section 10 of P.L. .c.  
6 (C. )(now pending before the Legislature as section 10 of this bill),  
7 organized criminal activity directed toward the unlawful  
8 transportation, storage, disposal, discharge, release, abandonment or  
9 disposition of any harmful, hazardous, toxic, destructive, or polluting  
10 substance, or any conspiracy to commit any of the foregoing offenses  
11 or which may provide evidence aiding in the apprehension of the  
12 perpetrator or perpetrators of any of the foregoing offenses.  
13 (cf: P.L.1995, c.119, s.1)]<sup>1</sup>

14

15 <sup>1</sup>[10. (New section) A person is a leader of a cellular fraud  
16 trafficking network if he conspires with others as an organizer,  
17 supervisor, financier, or manager, to engage for profit in a scheme or  
18 course of conduct to unlawfully take, acquire, distribute, or otherwise  
19 traffic in access devices, defaced access devices, or any service  
20 equipment, device, computer, computer equipment, computer software  
21 or instrument designed or intended to facilitate the receipt of any  
22 telecommunications service and to avoid the lawful payment of the  
23 charges therefore to the provider, in whole or in part. Leader of a  
24 cellular fraud trafficking networks is a crime of the second degree.  
25 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the  
26 court may impose a fine, or order restitution, or both, not to exceed  
27 \$250,000 or five times the losses associated with any access devices  
28 or defaced access devices in either human readable or computer  
29 readable form, copies or originals, seized at the time of arrest,  
30 whichever is greater.

31 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of  
32 leader of a cellular fraud trafficking network shall not merge with the  
33 conviction for any offense which is the object of the conspiracy.  
34 Nothing contained in this act shall prohibit the court from imposing an  
35 extended term pursuant to N.J.S.2C:43-7; nor shall this act be  
36 construed in any way to preclude or limit the prosecution or  
37 conviction of any person for conspiracy under N.J.S.2C:5-2, or any  
38 prosecution or conviction for any other offense.

39 It shall not be necessary in any prosecution under this act for the  
40 State to prove that any intended profit was actually realized. The trier  
41 of fact may infer that a particular scheme or course of conduct was  
42 undertaken for profit from all of the attending circumstances, including  
43 but not limited to the number of persons involved in the scheme or  
44 course of conduct, the actor's net worth and expenditures in relation  
45 to his legitimate sources of income, the number of access devices or  
46 defaced access devices involved, the quantity and functions of any

1 cellular telephones and other instruments, computers, computer  
2 equipment, computer software or equipment seized at the time of  
3 arrest, or the total amount of losses incurred by the affected  
4 telecommunications carriers related to the scheme or course of  
5 conduct.

6 It shall not be a defense to a prosecution under this act that the  
7 access devices, defaced access devices or any other related  
8 instruments or equipment involved in the scheme or course of conduct  
9 had been obtained in another jurisdiction; nor shall it be a defense that  
10 the ultimate distribution of the access devices or defaced access  
11 devices, or any profit therefrom, was to occur in another jurisdiction.

12 In any prosecution under this act, possession of two or more access  
13 devices, one or more defaced access devices, or any equipment,  
14 device, computer, computer equipment, computer software or  
15 instrument used or capable of adaptation for use in removing,  
16 defacing, altering, destroying, changing, or otherwise modifying the  
17 original configuration of an access device shall be presumptive  
18 evidence of an intent to traffic in access devices.]<sup>1</sup>

19

20 <sup>1</sup>[11.] 6.<sup>1</sup> (New section) In any prosecution for an offense  
21 enumerated in chapter 20 of Title 2C of the New Jersey Statutes  
22 involving a defaced access device, any removal, erasure, defacement,  
23 alteration, destruction, covering or other change in such access device  
24 from its original configuration performed by any person other than an  
25 authorized manufacturer of, or service provider to access devices shall  
26 be presumed to be for an unlawful purpose.

27

28 <sup>1</sup>[12.] 7.<sup>1</sup> This act shall take effect immediately.

29

30

31

32

33 Revises statutes concerning telecommunications crime.